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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,741	10/17/2001	Matthew T. Scholz	54402US028	7855

7590 04/21/2005

Office of Intellectual Property Counsel
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PO Box 33427
St. Paul, MN 55133-3427

EXAMINER

AHMAD, NASSER

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/982,741

Applicant(s)

SCHOLZ ET AL.

Examiner

Nasser Ahmad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-20 and 23-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-20 and 23-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Rejections Withdrawn

1. Claims 1-3, 5-7, 14-16 and 24 rejected under 35 USC 103(a) as being unpatentable over Reeves in view of Fetterman in view of the amendment filed on 12/21/2004.
2. Claims 8-13, 17-18, 20 and 25-27 rejected under 35 USC 103(a) as being unpatentable over Reeves in view of Fetterman and Crawley in view of the amendment.
3. Claim 19 rejected under 35 USC 103(a) as being unpatentable over Reeves in view of Fetterman and Ogden in view of the amendment.
4. Claim 24 is rejected under 35 USC 103(a) as being unpatentable over Reeves in view of Fetterman and Chen in view of the amendment.

Response to Arguments

5. Applicant's arguments with respect to claims 1-3, 5-20 and 23-27 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3, 5-12, 14-15, 17-20 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheeseman (Canadian: 1197745) .

Cheeseman relates to a medical drape (figures 1 and 2) comprising a backing layer (10) having a first surface (14) and a second surface (12), where projecting from the first surface is an array of stems (20 or 32) which are integrally formed with said backing layer. Among the material used is polyurethane, which is well known in the art for its elastomeric and frictional properties. However, Cheeseman fails to teach the properties of the stem aspect ratio being at least 1.25, a dry static coefficient of friction (COF) of at least 0.6. It would have been obvious to one having ordinary skill in the art to modify Cheeseman by providing the stem aspect ratio of at least 1.25 and a dry static COF of at least 0.6 for the drape, based on optimization through routine experimentation, for securing the drape in place on the patient and have frictional control.

The COF when wet being within 905 when dry would have obvious modification, based on optimization through routine experimentation, for providing optimum slip control.

Further, Cheeseman, in figure-3, shows a stack of the securing means wherein the second array of stems protrude from the second surface of the backing layer and a second backing layer is found adjacent to the first backing layer. The release liner (30) is taken to be the reinforcing layer disposed between the backing layers and said liner is well known to be of non-woven material. Cheeseman's figure-2 shows the presence of channels between stems.

8. Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheeseman in view of Reeves (5491015).

Cheeseman, as discussed above, fails to teach that the projecting array has 15.5 to 1500 upstanding stems per sqcm. and stem cross-sectional dimension of 0.076-0.76 mm. Reeves relates to a backing sheet having an array of upstanding stems to provide for slip control. Therefore, it would have been obvious to one having ordinary skill in the art to utilize Reeves teaching or using an array of stems in the invention of Cheeseman with the motivation to provide for slip control and having 15.5 to 1500 stems per sqcm.

And cross-sectional stem dimension of 0.076-0.76 mm. would have been obvious, based on optimization through routine experimentation for optimum slip control.

The stem being of polyurethane would obviously exhibit the shore hardness value of less than 90A to provide for comfort to the patient.

The properties of dynamic shear strength and dry static COF would have been obvious as discussed in the previous paragraph.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-3, 5-20 and 23-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-34 of U.S.

Patent No. 6,372,323. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant application and the Patent'323 are directed to a slip control article for wet and dry conditions, and having the claimed properties of stem density, shore hardness, static COF, dynamic shear strength, aspect ratio, etc. However, Patent'323 fails to recite that the article is a medical drape. It would have been obvious to one having ordinary skill in the art to utilize the article of Patent'323 as a medical drape for providing friction control when used over a patient.

11. Claims 1-3, 5-20 and 24-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-29 of U.S.

Patent No. 6,610,382. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant application and the Patent'382 are directed to a slip control article for wet and dry conditions, and having the claimed properties of stem density, shore hardness, static OF, dynamic shear strength, aspect ratio, etc. however, Patent'382 fails to recite that the article is a medical drape. It would have been obvious to one having ordinary skill in the art to utilize the

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article of Patent'382 as a medical drape for providing friction control when used over a patient.

Allowable Subject Matter

12. Claims 13, 16 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art uncovered so far fails to teach that the reinforcing layer is a woven scrim material or that the elastomeric material comprises at least one antioxidant.

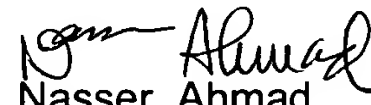
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nasser Ahmad whose telephone number is 571-272-1487. The examiner can normally be reached on 7:30 AM to 5:00 PM, and on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.
For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nasser Ahmad
Primary Examiner
Art Unit 1772

N. Ahmad.
April 18, 2005.